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8 *Appointed Class Counsel*

9 *[Additional Counsel on Signature Page]*

10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

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13
14 IN RE CONAGRA FOODS, INC.

) Case No. CV 11-05379-CJC (AGRx)

) MDL No. 2291

) **CLASS ACTION**

) **JOINT DECLARATION OF CLASS**
) **COUNSEL SUPPLEMENTING AND**
) **JOINING THE DECLARATION OF**
) **DEFENDANT'S COUNSEL ANDREW**
) **G. PHILLIPS IN SUPPORT OF**
) **OBJECTOR M. TODD**
) **HENDERSON'S APPLICATION FOR**
) **LEAVE TO FILE UNDER SEAL**
) **(DKT. 757) AND RESPONSE TO**
) **CLASS MEMBER SHIYANG**
) **HUANG'S OPPOSITION TO**
) **OBJECTOR HENDERSON'S**
) **APPLICATION TO SEAL (DKT. 761)**

1 We, Co-Lead Class Counsel ARIANA J. TADLER, ADAM J. LEVITT and
2 DAVID AZAR, hereby jointly declare and state as follows pursuant to 28 U.S.C.
3 §1746:

4 1. Ariana J. Tadler is an attorney duly licensed to practice law in the states
5 of New York and New Jersey and is admitted *pro hac vice* in this Court. She is the
6 Founding Partner of Tadler Law LLP and counsel of record for the Plaintiffs and the
7 certified class in the above-captioned matter. Ms. Tadler was formerly a partner at
8 the law firms of Milberg Tadler Phillips Grossman LLP (“MTPG”) and Milberg LLP
9 (“Milberg”).

10 2. Adam J. Levitt is an attorney duly licensed to practice law in the state of
11 Illinois and is admitted *pro hac vice* in this Court. He is a partner of the law firm of
12 DiCello Levitt Gutzler LLC (“DLG”) and counsel of record for the Plaintiff and the
13 certified class in the above-captioned matter. Mr. Levitt was formerly a partner at the
14 law firms of Wolf Haldenstein Adler Freeman & Herz LLP and at Grant &
15 Eisenhofer P.A.

16 3. David Azar is an attorney duly licensed to practice law in the state of
17 California and is a partner of Milberg Coleman Bryson Phillips Grossman PLLC, and
18 was a partner of both MTPG and Milberg and counsel of record for the Plaintiff and
19 the certified class in the above-captioned matter.

20 4. Our firms are Co-Lead Class Counsel (“Class Counsel”) under the
21 Settlement with ConAgra, which has been resubmitted to the court for Final
22 Approval, post remand by the United States Court of Appeals for the Ninth Circuit
23 (Dkt. 742).

24 5. We submit this declaration pursuant to L.R. 79-5.2.2(b)(i) and the June
25 25, 2013 Stipulated Protective Order (Dkt. 163) both in support of Objector M. Todd
26 Henderson’s Application For Leave To File Under Seal (Dkt. 757) certain documents
27 in connection with his Renewed Objection to Proposed Settlement and Fee Request
28 (Dkt. 759), and in response to Class Member Shiyang Huang’s Opposition To

1 Objector Henderson's Application To Seal (Dkt. 761). We have personal knowledge
2 of the facts set forth in this declaration and could testify competently as to them if
3 called upon to do so.

4 6. We have reviewed the materials that are the subject of the Application.
5 The documents and related references are appropriately sealed pursuant to the
6 compelling reasons and good cause standards. All of the documents at issue in the
7 Application consist of or discuss confidential settlement communications between the
8 parties and/or with the Court-appointed mediator, the Honorable Douglas
9 McCormick, and/or the settlement claims administrator selected by Magistrate Judge
10 McCormick. Each document contains or references highly sensitive, confidential
11 settlement communications and negotiations that merit protection and should be kept
12 from public disclosure. Accordingly, they are appropriately sealed pursuant to both
13 the compelling reasons and the good cause standards.

14 7. ***This Court has already recognized that documents concerning***
15 ***settlement negotiations would be confidential and filed under seal in connection***
16 ***with the resubmitted motion for Final Approval.*** See Transcript July 19, 2021 at
17 55:14-17 (ordering that the Magistrate Judge's declaration would be filed under seal
18 "because it's going to reflect settlement negotiation"); *see also id.* at 52:11-20
19 (acknowledging that Plaintiff's counsel may file information about the settlements
20 under seal as long as Mr. Frank can review the documents).

21 8. Further, contrary to Objector Shiyang Huang's argument, Objector
22 Henderson has not waived – nor could he waive – any arguments by the designating
23 parties that the documents Henderson filed under seal satisfy the standards for
24 remaining under seal pursuant to the local rules – which is the entire purpose of the
25 declaration pursuant to L.R. 79-5.2.2(b)(i).

26 9. We have reviewed the Court's Civil Procedures and Civil Local Rule 79-
27 5.2. We hereby certify that Application and supporting Declarations comply with the
28

1 Court's Civil Instructions, Local Rule 79-5.2, and the Stipulated Protective Order in
2 this action.

3 10. We have reviewed the Declaration of Andrew G. Phillips On Behalf Of
4 Defendant Conagra Brands, Inc. In Support of Objector M. Todd Henderson's
5 Application For Leave To File Under Seal (Dkt. 762) ("Phillips Declaration").

6 11. *We adopt and incorporate by reference the legal authority and*
7 *argument in the Phillips Declaration*, which establishes good cause and/or
8 demonstrate compelling reasons why the strong presumption of public access in civil
9 cases should be overcome *as to all of the documents that are the subject of*
10 *Henderson's Application* – which includes settlement documents produced by Class
11 Counsel, as well as settlement documents produced by Conagra (i.e., Exhibits A
12 through BB (Dkt. 758-3 through 758-30)), along with the Declaration of Theodore H.
13 Frank & Offer of Proof (Dkt. 758-1) that discusses the submitted Exhibits and other
14 settlement communications produced by the parties pursuant to this Court's order and
15 designated as confidential.

16 12. As noted in the Phillips Declaration, and confirmed by our independent
17 research, the materials at issue in the Application relate to one narrow category of
18 documents: confidential settlement communications and negotiations, which are
19 protected under Federal Rule of Evidence 408 and this district's mediation privilege.
20 Federal courts in the Ninth Circuit routinely grant applications to seal these types of
21 documents and communications.

22 13. Further, as to the points in paragraph 8 of the Phillips Declaration, we
23 believe those concerns apply as well to Class Counsel: that public disclosure of these
24 settlement materials would offer current and prospective litigants' direct insight into
25 Class Counsel's negotiations and essentially would penalize Class Counsel for
26 engaging in settlement discussions and mediation in good faith. Already, we believe
27 that Henderson's Objection provides a selective and slanted presentation of the
28 parties' production reflecting settlement negotiations lasting more than a year, thus

1 creating a misimpression of the facts. Public disclosure would also create a
2 significant disincentive for efficient and frank settlement communications through
3 electronic means, which the parties made under the understanding that they were
4 communications protected by the mediation privilege.
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6 We each declare under the penalty of perjury under the laws of the State of
7 California and the United States of America that the foregoing is true and correct.

8 Executed this 7th day of December, 2021.
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1 Dated: December 7, 2021

/s/ David E. Azar

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/s/ Ariana J. Tadler

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/s/ Adam J. Levitt

18 ADAM J. LEVITT (*pro hac vice*)
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27 *Class Counsel*
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ATTESTATION

I hereby attest that all signatories listed above, on whose behalf this declaration is submitted, concur in the filing's content and have authorized the filing.

/s/ David E. Azar

DAVID E. AZAR

CERTIFICATE OF SERVICE

I, David E. Azar, an attorney, hereby certify that on December 7, 2021, I caused a true and correct copy of the foregoing JOINT DECLARATION OF CLASS COUNSEL SUPPLEMENTING AND JOINING THE DECLARATION OF DEFENDANT'S COUNSEL ANDREW G. PHILLIPS IN SUPPORT OF OBJECTOR M. TODD HENDERSON'S APPLICATION FOR LEAVE TO FILE UNDER SEAL (DKT. 757) AND RESPONSE TO CLASS MEMBER SHIYANG HUANG'S OPPOSITION TO OBJECTOR HENDERSON'S APPLICATION TO SEAL (DKT. 761) to be filed and served electronically via the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ David E. Azar
David E. Azar